IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.274 OF 1996
IN
SUMMARY SUIT NO.3066 OF 1995

Bank of India. ..Plaintiffs.
Vs.
Arun Sabnis. ..Defendant.

Ms.Shilpa Kamble i/by Shukla & Shukla for the Plaintiffs.

Ms.Sandhya Jain alongwith A.A.Joshi for the Defendant.

CORAM: A.S.OKA, J.
DATE : 21st September, 2007

P.C.

1. Heard learned counsel appearing for the plaintiffs in support of the Summons for Judgment. I have also heard the learned counsel appearing for the defendant.

2. The Summary Suit is filed by the plaintiffs for recovery of a sum of Rs.68,586.25ps. from the defendant as set out in Exhibit-B to the plaint with interest as prayed.

3. According to the case of the plaintiffs, the defendant applied to the plaintiffs for issuing a Taj Premium Card and the said Taj Premium Card was granted to the defendant. According to the plaintiffs the defendant signed an application form accepting the terms and conditions on which the card was to be used.

According to the case of the plaintiffs the procedure to be followed by holder of the card for availing of the services was as set out in Paragraph-3 of the plaint. According to the said procedure the defendant was entitled to present the said card to the Member Establishments and sign the charge slips in triplicate for the purchase of goods for availing the services of the Member Establishments. Two of the slips are retained by the Member Establishments and the third is to be returned to the card holder. The Member Establishment used to obtain reimbursement against presenting the said charge slips signed by the said card holder. The plaintiffs were thereafter raising bills on the card holder for the payment of amount registered in the charge slips and expenses incurred by the plaintiffs on account of the use of the said card were to be reimbursed by the said defendant.

4. The case of the plaintiff is that the defendant made purchases amounting to Rs.46,897.25 by using the facility of the card and failed to pay the said amount inspite of repeated demands.

5. The submission of the learned counsel for the plaintiffs is that the suit is based on written contract in the form of application form duly signed by the defendant which contains terms and conditions on which

the facility of the Taj Premium Card was granted to the defendant. She submitted that the claim of the plaintiffs is based on charge slips duly signed by the defendant himself.

6. The submission of the learned counsel appearing for the defendant is that the suit is not maintainable as a Summary suit under Order XXXVII of the Code of Civil Procedure, 1908. Reliance is placed on the reply to the Summons for Judgment in which it is stated that the plaintiffs have not given inspection of the charge slips allegedly signed by the defendant on which the claim in the suit is based. It is, therefore, submitted that the defendant is entitled to unconditional leave to defend the suit.

7. By way of rejoinder, the counsel for the plaintiffs submitted that it was not necessary for the plaintiffs to give inspection of the charge slips as the defendant himself is aware of the charge slips signed by him and the claim in the suit is based on charge slips signed by the defendant.

8. I have considered the submissions. The liability of the defendant as pleaded in the plaint is based on the charge slips allegedly signed by the defendant while availing facility of Taj Premium Card. The defendant is

entitled to verify whether the charge slips on which reliance has been placed by the plaintiffs are in fact signed by him. The charge slips are neither produced before the court nor inspection thereof is given to the defendant.

9. The maintainability of the suit as a Summary Suit is also a plausible defence.

10. Considering the aforesaid aspects, the defence of the defendant cannot be said to be a moon shine defence. Moreover, the suit is of the year 1995 and the Summons for Judgment is being heard twelve years after the date of filing of the suit. Hence, defendant is entitled to unconditional leave to defend the suit. The Summons for Judgment is accordingly disposed of by granting unconditional leave to defend the suit. The defendant to file his written statement within a period of eight weeks from today. Suit shall be thereafter transferred to the List of Commercial Causes.

(A.S. OKA, J.)